IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5387 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHORE NARSIBHAI PATEL - Petitioner(s)
Versus
STATE BANK OF SAURASHTRA - Respondent(s)

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Appearance :
MR DK NAKRANI for Petitioner(s) : 1,
MR SANDEEP N BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/06/2006

ORAL JUDGMENT

1. This is a mis-conceived petition inasmuch as the relief sought for in the present petition Para-13(A) is, *“This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing*

and setting aside the action of the respondent Bank not to release the FDR No.641591 of Rs.1,28,607.50 dated 4th March, 1994, FDRs No.641694 of Rs.41,250/- dated 10th June, 1994, FDR No.641909 of Rs.19,950/- dated 26th November, 1994 as per Annexure – A and further be pleased to direct the respondent Bank to release the FDRs as per Annexure – A in the petitioner's Bank Account No.98541601724 forthwith."

Annexure – A is the xerox copies of the aforesaid FDRs.

2. The learned advocate, Mr. Nakarani, invited the attention of the Court to the order passed by this Court in Special Civil Application No. 20633 of 2005 (Coram : Hon'ble Mr. Justice K.S.Jhaveri, J.) dated 27th October, 2005. He has submitted that the Hon'ble Court was pleased to issue certain directions to the respondent Bank, of which, direction (ii) is as under :-

"(ii) If the petitioners request to encash the FDRs which are lying with State Bank of Saurashtra, Karanpara, Rajkot, the same will be adjusted against the amount referred to hereinabove."

3.The case of the petitioner is strenuously submitted by the learned advocate appearing for the petitioner that, 'the respondent Bank is not complying with the aforesaid directions.' If that is so, the remedy is not by way of filing the Special Civil Application before this Court.

4.Besides, it is pointed out by the learned advocate for the petitioner himself that it is the case of the respondent Bank, which is found from the affidavit-in-reply filed on behalf of the respondent Bank by one Shri Ramesh S. Suchak, Branch Manager of State Bank of Saurashtra, Karanpara Branch, Rajkot that :-

“(Para – 1) I say that the grievance made in the petition by the petitioner regarding F.D.R. is incorrect, improper and therefore is not acceptable to the respondent Bank.....”

“(Para – 4) I say and submit that the FDRs in the name of M/s. Patel Construction Company, which are matured on 4.3.1995, 10.6.1995 and 26.11.1995, as the bank has already filed Civil Suit No.301 of 1992 to recover the

huge dues of the bank and therefore, the respondent bank has exercised right of set off on 17.5.1996 and by letter dated 17.5.1996 by registered post A.D. is sent to M/s. Patel Construction. The Registered A.D. cover has returned back as the firm is not found there. The copy of the letter dated 17.5.1996 with Registered post A.D. cover are annexed to this affidavit in reply and marked as Annexure – A-1 to this petition. I say and submit that the amount is also credited in protested bill account and extract of statement of accounts are also produced herewith to this affidavit in reply and marked as Annexure – A-2 to this reply and therefore, it is very clear that bank has already exercised right of set off against M/s. Patel Construction Company in the year 1996. Which is credited into the P.B.Account of Bank guarantee and thereafter the matter is compromised in D.R.T. in the year 2000 and learned Debts Recovery Tribunal has passed judgment and order in October, 2000."

5. On perusal of letter dated 17th May, 1996, which is at Annexure – A-1 to this affidavit-in-reply, it is clear that the Bank had informed M/s. Patel Construction Company as back as on 17th May, 1996 that *"with*

reference to above, we advise you that Special Term Deposits standing in your name matured on 4.3.95, 10.6.95 and 26.11.95 respectively. We have exercised the right of set-off on the above matured Sp.T.D.R.S. and credited the proceeds thereof into your Protested Bills Account with our Branch."

6. From the aforesaid facts, it is clear that the present petition does not deserve to be entertained also on the ground that the question involved in the petition is highly disputed question of fact.

7. The petition is dismissed. Notice is discharged. No order as to costs.

(RAVI R. TRIPATHI, J.)

kdc.